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No. 509.

In the Supreme Court of the United States

October Term, 1952.

TRANSCONTINENTAL & WESTERN AIR, INC., *Petitioner*,

vs.

JOSEPH H. KOPPAL, *Respondent*.

RESPONDENT'S BRIEF.

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OPINION BELOW.

The opinion of the United States Court of Appeals for the Eighth Circuit (164-180)* is reported at 199 F. 2d 117. The opinion of the United States District Court for the Western District of Missouri, Western Division (124-130) was not reported.

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*Unless otherwise stated, references in parentheses are to pages of the record, and italics are for emphasis and are ours.

JURISDICTION.

The jurisdiction of this Court was invoked under 28 U. S. C. A. Sec. 1254 (1), and petition for writ of certiorari to the Court of Appeals granted February 9, 1953 (73 S. Ct. 504-Adv. Ed., March 1, 1953), limited, however, to questions 1 and 2 presented by the petition.

STATEMENT OF THE CASE.

Petitioner's statement of the case is accurate and adequate insofar as the history of the cause is concerned, but is remarkably deficient in references to the evidence in the record upon which respondent relied for his cause of action, and which motivated the District Court to submit his case to the jury, and upon which the jury based its verdict in his favor.

Although the facts of this cause are not in issue before this Court, it would be unfair to allow petitioner's statement to stand without a brief supplement.

Respondent was a married man and responsible for the support of his wife and two children (91, 93, 94). After his discharge by petitioner he was unable to secure employment in the air transport industry in Kansas City and moved to California, from where he traveled for the trial of this case (93, 98). There was substantial evidence that respondent was ill and unable to work on November 8, 1950, and that he did not abuse the sick leave provisions of the collective bargaining agreement in not reporting for work on that day (91, 92, 93, 94, 95, 136). There was substantial evidence that respondent was ill on November 9th, 1950, although he reported for work on that day (92, 96, 136). There was substantial evidence that the meeting between respondent, DeMattia and Wilson on November 8, 1950, in respondent's home was not prearranged (91, 92, 94). There was substantial evidence that respondent did not receive a fair hearing (96, 97, 136, 137, 138), and that he did not voluntarily resign, but was summarily discharged (98, 138). Respondent had seven years seniority with petitioner, had a good employment and promotion record (24-25). Petitioner

had no published policy regarding sick leave (26-29, 80), and no standards of rule violation serious enough to require discharge, other than for "just cause." (48, 68.)

The record does not fairly represent all of the evidence favorable to respondent, since his appeal to the court below was presented on the theory that sufficiency of the evidence was not in issue due to the decision of the District Court (120-121, 124-130), and because petitioner did not raise the point during the trial (101, 102).

ARGUMENT.

I.

State law does not apply to an action for wrongful discharge arising out of an employment relationship covered by the Railway Labor Act within the field of matters regulated by the Act.

Respondent submits that the question of application of state law in this case is squarely answered by the Federal Rules of Decision Act, 28 U.S.C.A., Sec. 1652, enacted by the First Congress of the United States, and which provides:

> "The laws of the several states, except where the constitutions and treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

In *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, this Court held that judicial decisions, as well as statutory law are "the laws of the several states" within the meaning of the Rules of Decisions Act, but did not hold that state decisions prevail over decisions of this Court, interpreting laws of the United States, as urged by petitioner.

The question of applicability of state decisions in the field of Federal law is treated as settled in 14 Am. Jur., Courts, Sec. 90, p. 303:

> "It is, of course, clear that where the question is one of Federal law, the Federal Courts are not bound by the decision of State Courts."

Congress has seen fit to comprehensively control every phase of the relationship between employer and employee in the railroad industry. The provisions of the Railway Labor Act itself, and the decisions of this Court can leave no question concerning the intent of Congress to include within its regulation the wrongful discharge of employees in the railroad industry. The question as to the nature and effect of the provisions of the Railway Labor Act upon suit for wrongful discharge was decided by this Court in the case of *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630 and affirmed by the court in *Slocum* v. *Delaware L. & W. R. Co.*, 339 U. S., 239, and renders state decisions to the contrary inapplicable.

The Supreme Court of Texas in the case of *Texas and N. O. R. Co.* v. *McCombs*, 183 S. W. 2d 716 had no difficulty in determining this question, and overruled a long line of Texas decisions holding that an employee was required to exhaust his contract remedies with the railroad as a prerequisite to suit for wrongful discharge, upon the authority of *Moore* v. *Illinois Central R. Co.* (*supra*).

In this case the petitioner and the collective bargaining representative recognized the controlling authority of the Railway Labor Act over the entire employment relationship in the preamble to the agreement (31) and also recognized it in the body of the agreement (72) where it is provided that nothing in the contract shall be construed to limit, restrict, or abridge rights or privileges accorded under the provisions of the Railway Labor Act, as amended.

The administrative remedy provisions for wrongful discharge in the agreement (63-73) were not independently arrived at through a meeting of minds between the parties, but conform directly to the requirements of the Act. (45 U. S. C. A. Sec. 184.)

The nature and effect of such provisions in a contract made under the Railway Labor Act are therefore not questions of Missouri law but questions arising under an Act of Congress under which federal law and federal decisions are controlling under the Federal Rules of Decision Act. (*supra*).

This Court has held that an employee subject to the provisions of the Railway Labor Act has the right to sue a carrier for wrongful discharge, without first exhausting his remedies under the Act and under the applicable collective bargaining agreement entered into under the Act. Congress has not deemed it necessary to prescribe a special statute of limitations, nor to legislate concerning other matters of substantive law pertaining to wrongful discharge actions arising in the railroad industry. Such a status is not unique and merely leaves the litigants subject to the substantive law of the several states in those areas in which Congress has not seen fit to act.

The cases of *Reed* v. *St. Louis S. W. R. Co.*, 95 S. W. 2d 887, and *Harrison* v. *Pullman Co.*, 68 F. 2d 826, here relied upon by petitioner, were respectively held to be inapplicable and no longer reflective of the law by the court below. These cases were originally decided without regard to the Railway Labor Act and its construction and interpretation by this Court. State laws and state decisions have never taken precedence over the decisions of federal courts in the field of federal law. Where, as here, the entire employment relationship is regulated by Congress, state law cannot be said to be an exception to the rule.

Petitioner argues that the language of Sec. 184 of the Act compels respondent to exhaust his remedies with the carrier under the agreement before instituting suit. In

so doing petitioner admits the existence of a question of interpretation of a federal law in which federal decisions control.

II.

The decisions of this Court in *Moore* v. *Illinois Central R. Co.* and *Slocum* v. *Delaware, L. & W. R. Co.* preclude the application of state law requiring an employee to seek adjustment of a wrongful discharge controversy with a carrier regulated by the Railway Labor Act, as a prerequisite to a suit for damages for wrongful discharge.

In *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, two questions were decided by the Court. First, the Court decided that the Mississippi Supreme Court's interpretation of a Mississippi statute of limitations was binding upon the courts of the United States. Secondly, the court decided that it was not necessary, as a prerequisite to a suit at law for wrongful discharge, for an employee to first exhaust his administrative remedies under the Railway Labor Act or with the carrier under the collective bargaining agreement.

Petitioner urges the Court, as does the dissenting opinion of the court below, that the Moore decision stands only for the proposition that the Railroad Labor Act affords an alternate administrative remedy before the Adjustment Board, in addition to an action at law, for wrongful discharge. This is not the case, for the carrier in the Moore case squarely put before the court both the question of failure to exhaust administrative remedies under the Act and failure to exhaust administrative remedies under the agreement. On page 634 of the opinion the Court said:

> "But respondent says that there is another reason why the judgment in its favor should be sustained.

> This reason, according to respondent, is that both the District Court and the Circuit Court of Appeals erred in failing to hold that Moore's suit was prematurely brought because of his failure to exhaust the administrative remedies granted him by the Railway Labor Act."

The court immediately answered the question thus posed by saying:

> "But we find nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court."

It is at this point that both the petitioner and the dissenting opinion stop in their analysis of the Moore case. However, this Court went on to say (l. c. 635):

> "And in connection with this statutory language the railroad also directs our attention to a provision in the agreement between the trainmen and the railroad—a provision authorizing Moore to submit his complaint to officials of the railroad, offer witnesses before them, appeal to higher officers of the company in case the decision should be unsatisfactory, and obtain reinstatement and pay for time lost if officials of the railroad should find that his suspension or dismissal was unjust."

The second reason advanced by the carrier in support of its argument that Moore's suit had been prematurely brought, was also answered adversely to the carrier by the court on page 636 of the opinion:

> "The District Court and the Circuit Court of Appeals properly decided that the petitioner was not required by the Railway Labor Act to seek adjustment of his

controversy with the railroad as a prerequisite to suit for wrongful discharge."

The statutory language to which the railroad referred in connection with its contention regarding the right of Moore to appeal to its higher operating officers, was the same identical language (45 U. S. C. A., Sec. 153 (i)) incorporated into 45 U. S. C. A., Sec. 184, pertaining to carriers by air, and which petitioner argues at great length to be compulsory in its effect and to invite the application of the decision of *Reed* v. *St. Louis S. W. R. Co.* (*supra*). This Court rejected the contention of the railroad in the Moore case, as did the court below in this case, holding that the original purpose of the Railway Labor Act in providing machinery for the settlement of disputes was not based upon a theory of legal compulsion, and that an employee was not required by the Act to appeal to the highest operating officer of the carrier before instituting a suit for wrongful discharge.

It would appear that petitioner is seeking to reverse the decision of this Court in the Moore case, because it is in conflict with the decision of a Missouri Court of Appeals decision, whereas in fact, and as correctly held by the court below, *Reed* v. *St. Louis S. & W. R. Co.* (*supra*), has been inapplicable to agreements entered into under the Railway Labor Act since the decision of this Court in the Moore case.

It is worthwhile noting in the report of the Moore case in 85 L. Ed. 1089, that both of the cases relied upon by petitioner in this cause were cited to the Court in the brief of the railroad under the point that Moore's suit had been prematurely brought (l. c. 1090).

Respondent submits that the decision of the Supreme Court of Texas in the case of *McComb* v. *Texas N. O. R.*

Co., 183 S. W. 2d 716, is entitled to great weight in this case, because in addition to following the decision of this Court in the Moore case, it overruled, upon the authority of the Moore case, a number of Texas decisions holding that the administrative remedies provided in the agreement must be exhausted prior to suit for wrongful discharge. We also cite to the Court the decision of the Texas Court of Appeals in the same case, *McComb* v. *Texas N. O. R. Co.*, 178 S. W. 2d 729.

The Texas decisions overruled by the McComb case were also cases relied upon by the St. Louis Court of Appeals in *Reed* v. *St. Louis S. W. R. Co.*, 95 S. W. 2d 887, 889, and were cited by this Court by the carrier in the Moore case, 85 L. Ed. 1089, 1090.

The general principle of the Moore case here in issue was affirmed in *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, although an action for wrongful discharge was not involved. In the Slocum case the state courts of New York took jurisdiction, under a state declaratory judgment statute, of a jurisdictional dispute involving a carrier and two unions and involving agreements entered into by them under the Railway Labor Act. This Court had previously held in *Order of R. Conductors* v. *Pitney*, 326 U. S. 561, that such a dispute and interpretation of contracts properly fell within the jurisdiction of the Adjustment Board, which jurisdiction could not be invaded by the courts. The Slocum decision held state courts were likewise bound to follow the interpretation of a Federal Statute by this Court.

The situation now before the Court in this cause is not unlike the Slocum case, in that petitioner is urging the Court that state law and state decisions prevail over the decisions of this Court interpreting the Railway Labor Act; and for the same reasons as stated in the Slocum case, the opinion of the court below should be affirmed.

Conclusion.

For the foregoing reasons the judgment of the United States Court of Appeals for the Eighth Circuit in this cause should be affirmed.

Respectfully submitted,

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